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of the presumption the defendant must satisfy the jury by the clear preponderance of proof that he is insane. *Graves v. State* (1883) 45 N. J. L. 347. Others hold that a simple preponderance of the evidence is sufficient. *Keener v. State* (1895) 97 Ga. 388, 24 S. E. 28. Both seem wrong. There is a line of cases in support of the better rule, that the state must prove beyond a reasonable doubt that the defendant was sane. *Davis v. United States*, *supra*; *Walker v. People* (1882) 88 N. Y. 81. Insanity is not soundly an affirmative defense, because by denying the criminal intent it denies the crime. The defendant having raised the issue, the state must prove sanity, as it does the physical act in the crime, beyond a reasonable doubt. If the jury is uncertain, the defendant should be acquitted. This rule does not encourage insanity as a sham defense. The usual scepticism of the jury in regard to such a frequently interposed defense, takes care of that.

GIFTS—*Inter Vivos* AND *Causa Mortis*—TESTAMENTARY INSTRUMENT.—The deceased, about to undergo an operation for cancer, executed and delivered to the defendant an instrument, in form a quit-claim deed, of all her real and personal property. The instrument was to take effect only upon her death and provided the donee survived her. As shown in the report of the case at the Trial Term (114 Misc. 483, 186 N. Y. Supp. 712) the deceased apparently recovered from the operation, but died four years later from cancer, following a second operation. In an action by the heir at law, *held*, the instrument did not pass title. *Butler v. Sherwood* (3d Dept. 1921) 196 App. Div. 603, 188 N. Y. Supp. 242.

The instrument was not a valid deed since it was revocable and to act *in futuro*. Similarly, there was no executed gift *inter vivos*. *Wertheimer v. Baum* (1908) 59 Misc. 527, 11 N. Y. Supp. 18. The instrument rather was testamentary in character, *Knight v. Tripp* (1898) 121 Cal. 674, 54 Pac. 267; *In re Belcher's Will* (1872) 66 N. C. 51; but invalid as a will since there had been no compliance with statutory requirements for wills. Gifts executed prior to a serious operation may be upheld as *causa mortis*. *Ridden v. Thrall* (1891) 125 N. Y. 572, 26 N. E. 627. But such a gift is complete upon delivery, though revocable by the donor's recovery. See *Ridden v. Thrall*, *supra*, 579. So even if there had been an unconditional delivery, the recovery of the donor would operate as a revocation, even though she later died due to the same disease. *Weston v. Hight* (1840) 17 Me. 287. Therefore, from whichever angle viewed, the proper result was reached. The court, however, seems partially to base its decision as to the invalidity of the gift on different and questionable grounds, *viz.*, that there was not such a delivery as could pass title *inter vivos* to chattels. It seems well settled, in most jurisdictions, that a constructive or symbolic delivery is sufficient. See *Beaver v. Beaver* (1889) 117 N. Y. 421, 428-429, 22 N. E. 940. However, in some jurisdictions symbolic delivery is valid only where actual physical delivery is impossible. *Cf. Cronin v. Chelsea Bank* (1909) 201 Mass. 146, 87 N. E. 484. In New York, the delivery of the instrument of gift constitutes a valid delivery. *Hawkins v. Union Trust Co.* (1919) 187 App. Div. 472, 175 N. Y. Supp. 694; *Matter of Cohn* (1919) 187 App. Div. 392, 176 N. Y. Supp. 492; see (1920) 20 COLUMBIA LAW REV. 196. Thus, though the court reaches the correct result, it is aided in so doing by one faulty premise.

MANDAMUS—PUBLIC SCHOOL AUTHORITIES—ADMINISTRATIVE LAW.—The plaintiff satisfactorily completed her high school course of study, but was denied a diploma because she refused to wear a recently fumigated gown at the graduation ceremony. In mandamus proceedings to compel the issue of the diploma, *held*, for the petitioner. *Valentine v. Independent School Dist. of Casey* (Iowa 1921) 183 N. W. 434.

The defendants in the instant case were authorized by statute to prevent